

RECEIVED
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
DIVISION

Charles Pointer

Plaintiff(s),

v. Walmart corporation
Johanna Hing cooadm
after
Rick shipping and receiv
ing manager

Defendant(s). (Enter above the full name(s)
of all defendants in this lawsuit. Please
attach additional sheets if necessary.)

Case No. _____
(to be assigned by Clerk of District Court)

JURY TRIAL DEMANDED

YES ☒ NO ☐

EMPLOYMENT DISCRIMINATION COMPLAINT

1. This employment discrimination lawsuit is based on (check only those that apply):

☒ Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.*, for employment discrimination on the basis of race, color, religion, gender, or national origin.
NOTE: *In order to bring suit in federal district court under Title VII, you must first obtain a right-to-sue letter from the Equal Employment Opportunity Commission.*

☒ Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 621, *et seq.*, for employment discrimination on the basis of age (age 40 or older).
NOTE: *In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file charges with the Equal Employment Opportunity Commission.*

☒ Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, *et seq.*, for employment discrimination on the basis of disability.
NOTE: *In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a right-to-sue letter from the Equal Employment Opportunity Commission.*

Plaintiff is suing Walmart Corp under vicarious liability and is holding them responsible for the unlawful actions of Johanna Hines coordinator and Rick Shippmy and a ceiling manager.

Plaintiff is suing both in their official capacity but is suing the corporation because defendants are not held liable for their actions and cannot afford to pay the costs of damages against Plaintiff.

Richard Lynch is the name of the shipping and receiving manager who took Pointer on a tour of the working area. He no longer works in the shipping and receiving area. The hiring coordinator Miss. Johanna told Plaintiff this information. They call him Rick.

Charles Pointer
Plaintiff
1-8-2019

Please note: I can only appear in court on a Tuesday or Thursday. I take my dialysis treatments on the other three days from 6:30 am to 11:30 am.

____ Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 701, *et seq.*, for employment discrimination on the basis of a disability by an employer which constitutes a program or activity receiving federal financial assistance.

NOTE: *In order to bring suit in federal district court under the Rehabilitation Act of 1973, you must first file charges with the appropriate Equal Employment Office representative or agency.*

____ Other (Describe)

PARTIES

2. Plaintiff's name: Charles Pointer

Plaintiff's address: 4771 Maffit
Street address or P.O. Box

St. Louis, MO 63113
City/ County/ State/Zip Code

314-359-3532
Area code and telephone number

rick - shipping
and receiving manager
3. Defendant's name: Walmart Corporation
Johanna - hiring coordinator
Walmart Corp

Defendant's address: 1202 S Kirkwood Rd
Street address or P.O. Box

Kirkwood, MO 63122
City/County/State/ Zip Code

314-835-9406
Area code and telephone number

NOTE: IF THERE ARE ADDITIONAL PLAINTIFFS OR DEFENDANTS, PLEASE PROVIDE THEIR NAMES, ADDRESSES AND TELEPHONE NUMBERS ON A SEPARATE SHEET OF PAPER.

4. If you are claiming that the discriminatory conduct occurred at a different location, please provide the following information:

(Street Address) (City/County) (State) (Zip Code)

5. When did the discrimination occur? Please give the date or time period:

November 12, 2018

ADMINISTRATIVE PROCEDURES

6. Did you file a charge of discrimination against the defendant(s) with the Missouri Commission on Human Rights?

☒ Yes Date filed: Dec 7, 2018
☐ No

7. Did you file a charge of discrimination against the defendant(s) with the Equal Employment Opportunity Commission or other federal agency?

☐ Yes Date filed: _____
☐ No

8. Have you received a Notice of Right-to-Sue Letter?

☒ Yes ☐ No

If yes, please attach a copy of the letter to this complaint.

9. If you are claiming age discrimination, check one of the following:

☐ 60 days or more have passed since I filed my charge of age discrimination with the Equal Employment Opportunity Commission.

☒ fewer than 60 days have passed since I filed my charge of age discrimination with the Equal Employment Opportunity Commission.

NATURE OF THE CASE

10. The conduct complained of in this lawsuit involves (check only those that apply):

☒ failure to hire me

☐ termination of my employment

☐ failure to promote me

☒ failure to accommodate my disability

☒ terms and conditions of my employment differ from those of similar employees

☐ retaliation

☐ harassment

☐ other conduct (specify):

Did you complain about this same conduct in your charge of discrimination?

☒ Yes

☐ No

III. Statement of Claim

Type, or neatly print, a short and plain statement of the FACTS that support your claim(s). For every defendant you have named in this complaint, you must state what he or she personally did to harm you. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Do not make legal arguments, or cite court cases or statutes. You may attach additional pages if necessary.

Your statement of claim must include all of the following information:

1. What happened to you?
2. When did it happen?
3. Where did it happen?
4. What injuries did you suffer?
5. What did each defendant personally do, or fail to do, to harm you?

Plaintiff is suing walmart corporation and is using vicarious liability in this cause of action against the walmart corporation because Defendant Johanna employment coordinator and Rick shipping and receiving manager cannot be held liable for discriminating against plaintiff. Plaintiff applied for a job at Walmart on NOV 12, 2018. Plaintiff met the minimal requirements and qualifications described in the job description. Plaintiff was african american with a disability above the age of 40. When plaintiff applied for the job. Johanna, hiring coordinator told Plaintiff by the score he made on the machine test he could not work good with people. This incident took place at Walmart 1202 S Kirkwood Rd Missouri, 63122

IV. Relief

State briefly and precisely what damages or other relief you want from the Court. Do not make legal arguments.

IV Pages IV Relief

1. Plaintiff is seeking make me whole
Plaintiff wants to be placed in a situation he would not have been in if discrimination would not have taken place. Give him a job like greeting customer coming into the store or putting goods on the shelves.

Compensatory damages of \$1,000,000 dollars for pecuniary loss, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and other non pecuniary losses \$1,000,000

punitive damages cause of action for damages was shown when the employer's action was malicious and done with reckless indifference

front to federally protected
rights to employees.
\$ 1,000,000.

Front Pay

\$ 2,160, front pay he would
have made if given a
job when he first applied
for the job working his
first year.

Front pay damages

\$ 11 dollars an hour
8 hours per hours

\$ 88 dollars a day

\$ 88

30 days a month
00

264

\$ 2,640 a month

\$ 26,800 a month

12 months equals a year

5360

2680

32,160

a year plaintiff would
have made his first
year.

Page 2 Statement of Claim

Plaintiff disagreed with this qualification to say he could not work with people because it did not measure performance. Plaintiff was not given an opportunity to work with customers to see how good he would perform in that work capacity. About 10 years ago Plaintiff worked at Office Max waiting on customers who came into the store to buy products. He with other associates filled their shopping needs. Office Max did not give Plaintiff a test to see if he could do the work. They judged Plaintiff by performance.

In Griggs v. Duke Power Co. 401 U.S. 424 (1971) it stated title VII prohibits not only overt discrimination but also practices that are fair in form but discriminatory in operation. The touchstone is business necessity if an employment practice which

Page 3

oprecates to exclude negroes cannot be shown to be related to job performance the practice is prohibited: taken from the book Employment Law for Business Dawn D Bennett Alexander, Lauree p Hartman, p 582.

plaintiff was called back to the personnel office to see if plaintiff could work on the dock taking goods off the trucks and Johanna Riek the shipping and receiving manager in to her office and introduced Riek to plaintiff. Defendant Riek took plaintiff on a tour of the facility and during the tour plaintiff told him he was on dialysis treatment from 6:30 am to 11 am but it would not

page 4

interfere with his work schedule at Wal-Mart.

Rick said, "Charles your treatment, schedule would not keep you from working in the shipping and receiving Department."

After the tour, Rick went into the office and spoke to the hiring manager Miss. Johanna. Johanna called Plaintiff into her office after speaking to Rick and said, "Charles you are not a fit for the job. You would be too slow working in a fast-paced work place taking products off the truck and placing products on the shelves."

Plaintiff said, "The test

5

"you gave does not measure performance."

She said "Charles you have to wait six months to apply for another job at the company."

The only way Miss. Johanna could say Plaintiff would be too slow doing the job working in shipping and receiving was because of what Rick told her about Plaintiff being on dialysis.

Plaintiff never told Miss. Johanna he was on dialysis. Plaintiff was discriminated against because of his disability.

Plaintiff works part time at the Southside clinic from 5:pm to 8:pm

6 cleaning waiting rooms
at a fast pace and
the treatments have not
kept him from doing
the work. Plaintiff received
an outstanding service
award and employee of
the month for his contribut
ion to the work site.

There was
no non-dis
criminatory
reason given
for not
hiring
plaintiff

They knew Plaintiff was
on dialysis but judged
Plaintiff by his performance
at their facility. Plaintiff
have worked there for the
passed two years.

The employer went on to
hire younger employees
and his next cause of action

is age discrimination
because Defendant hired
people younger than plain
tiff and the elements
of age discrimination are:

7

1. The employee is in a protected class and was over the age of 40. Plaintiff was over the age of 40 and was black.

2. She or he was not hired. The employer made an employment decision that adversely affected the employee not getting hired.

Plaintiff did not get hired.

3. The employee was doing his or her job well enough to meet her employer's legitimate expectations.

Plaintiff met the requirements and qualifications described in Respondent's job description and continued to hire younger candidates and not African Americans to fill shipping and receiving

3 positions.

Plaintiff told Defendant he worked at Office Max, many years ago getting merchandise and waiting on customers for over a year, plaintiff helped remodeled a store on Olive Street Road because of Plaintiff's work, he was sent to the Office Max store on Manchester and became a sales associate waiting on customers and getting merchandise out of the warehouse to fill orders for customers. No tests was given to work at their store. They judged you by performance. No non-discriminatory reason was given for not hiring plaintiff.

9

This unlawful action made it difficult to pay his bills. He already worked part time by working at Wal Mart full time in the evenings from 1pm to 10pm, he would have more hours to make enough money to pay his bills.

the act of job discrimination falls under the case

McDonnell Douglas Corp
v GLENN 411 U.S. 792

(1973) for the following reasons:

1. First he belong to a racial minority.
Poinfel was African American

2. That he applied and qualified for the job he was seeking

x
10
applicants

plaintiff met the minimum requirements of the job. Plaintiff worked at office max many years ago as a sales associate waiting on customers at office max and helped set up the store before it was opened and was sent to the Manchester store to work after the Olive Store opened up. Plaintiff took business courses for example: Introduction to Business, Business Management, Economics, Accounting and Statistics. Plaintiff was not given a test to see if he could do the work. Plaintiff was judged on how he performed the job.

11.

3. That after his rejection the position remained opened and the employer continued to seek applicants from persons comparable to plaintiff's qualifications. Plaintiff saw Defendant hiring other employees at the same time he was rejected who were going to be hired instead of plaintiff.

4. Plaintiff was not given a non-discriminatory reason for not being hired as a shipping and receiving worker at Walmart.

Disparate treatment took place when a white employee came into personnel and asked for an accommo-

12

dation. She indicated her hands shook when counting money and asked Jehanna, hiring coordinator could she have a stool to sit on when waiting on customers purchasing their goods. Miss Jehanna immediately made plans to get her a stool. If Plaintiff who was black was considered too slow Miss Jehanna could have given him a nother job in the company. It doesn't take much mental skills to place can goodson a shelf or when customers ask associates where are products located at in the store. Plaintiff received a good education to qualify him for the shipping and receiving job and had no

13

Physical barriers to keep him from unloading goods off the trucks. Defendant kept on hiring people after they did not hire him.

When addressing the issue of disparate impact of screening devices subjective and objective criteria are a concern objective criteria are factors that are able to be quantified by anyone such as whether the employee made a certain score on a written exam
page 104 Employ Law for Business,
Hartman, Alexander

Miss. Johanna, hiring coordinator said plaintiff made a score

14

on the test which indicated he could not work good with people. Plaintiff was a counselor at the St. Louis Job Corps Center located at 4300 Good fellow and held counseling sessions with his 40 boys who came from disadvantaged backgrounds and several of them were gang members. Plaintiff had a Master of Science degree in counseling education from Southern Illinois University at Edwardsville, Ill class of 1975. Plaintiff had no problems working in this job capacity.

subjective criteria are instead factors based on some one's personal thoughts or ideas (a supervisor's opinion as to whether the employee being considered for promotion is compatible

13

15

with the work place
 Rick the shipping and
 receiving manager took
 Plaintiff on a tour of
 the shipping and receiving
 area. Plaintiff told Rick
 he was on dialysis but
 he could still work the
 evening shift from 1 pm
 to 9 pm and the treat-
 ments would not inter-
 fere with the work
 schedule. Miss Johanna
 spoke to Rick and he
 left her office and
 said nothing to Plaintiff.

Miss Johanna, hiring
 coordinator said to
 Plaintiff, "Charles I don't
 think you would be a
 right fit for the position.
 You would be too slow
 out there. It is a
 fast paced job at mos-
 t times out there on

16
the shipping and receiving
dock.

In it all it was suspect-
ed that subjective criteria
could not be the basis
for disparate impact claims
since the Supreme
Court cases had only
involved objective
factors such as height
and weight, educational
requirements, test scores
page 104, Hartman-Alexander
et

In Watson v. Fork
Bank the Supreme
Court for the first time
determined that subject-
ive criteria could also
be the basis for a
disparate impact claim.
page 104

17

By Miss. Johanna saying
 Plaintiff was not a fit
 and would be too slow
 on the dock constituted
 a subjective criteria
 for a disparate impact
 claim based on what Rick told her.

In Watson a black
 employee had worked
 for the bank for years
 and was constantly pass
 ed over for the bank
 for years and was constant
 ly passed over for promotion
 in favor of white employ
 ees,

she eventually brought
 suit alleging racial
 discrimination in that the
 bank is subjective promotion
 had a disparate impact
 upon black employees.

The bank's subjective

19

Promotion policy had a disparate impact upon black employees. The bank's policy was to promote employees based on the recommendation of the supervisors, all of whom were white. The Supreme Court held that the disparate impact analysis could indeed be used in determination in a subjective criteria cases.

Here, Rick the manager of shipping and receiving spoke to Miss. Johanna first without plaintiff witnessing what he said to her about plaintiff. Johanna used subjective criteria from what Rick told her to not hire

14

Plaintiff by saying he was not a fit for the job and that the loading dock is a fast paced working area and that he would be too slow to perform the work. Plaintiff was not given an opportunity to perform the job to see if he could work at a fast pace or not. It was based on subjective criteria leading to disparate impact against Plaintiff.

What Rick told Johanna imparted the decision making process for her not to hire Plaintiff to work in the shipping and receiving department at Walmart.

Plaintiff brought a claim of disability by saying

20

the following:

① That she or he is disabled

Plaintiff is currently on dialysis at Divita on Monday Wednesday, and Friday from 6:30 to 11:30 am.

② That he or she is qualified for the job
Plaintiff was able to do the job.

If an accommodation is required that the accommodation is reasonable.
Plaintiff was not given the opportunity to perform the job to see if he needed an accommodation or not.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Charles Pointer
Street Address	4771 Maffett
City and County	St. Louis MO 63113
State and Zip Code	MO 63113
Telephone Number	314 859 3532
E-mail Address	charles pointer 363 @ yahoo.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name	Walmart corporation
Job or Title	It is a corporation
Street Address	1202 S. RICKWOOD 63122
City and County	Rickwood, MO
State and Zip Code	MO 63122
Telephone Number	314 836-9406
E-mail Address	Jenanna Huling Wooding for Rick shipping and receiving manager

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant. If you are suing for violation of your civil rights, you must state whether you are suing each defendant in an official capacity, individual capacity, or both.)

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only three types of cases can be heard in federal court. Provide the information for this case. (Include all information that applies to your case)

A. Federal question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

1964 civil rights Bill
USCA 1481

age case, disability in violation of the civil rights act of 1964, age discrimination in Employment act and americans with disabilities act (ADA) as amended

B. Suit against the Federal Government, a federal official, or federal agency

List the federal officials or federal agencies involved, if any.

C. Diversity of Citizenship

These are cases in which a citizen of one State sues a citizen of another State or nation, and the amount at stake is more than \$75,000. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

1. The Plaintiff(s)

The plaintiff, (name) Charles Pointe, is a citizen of the State of (name) MO

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)

If the defendant is an individual

The defendant, (name) WALWART, is a citizen
of the State of (name) MO Or is a citizen
of (foreign nation) _____.

If the defendant is a corporation

The defendant, (name) WALWART
is incorporated under the laws of the State of (name)
MO, and has its principal place of
business in the State of (name) MO Or
is incorporated under the laws of the State of (foreign nation)
_____, and has its principal place
of business in (name) _____.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy----the amount the plaintiff(s) claims the defendant(s) owes or the amount at stake----is more than \$75,000, not counting interest and costs of court, because (explain):

11. I believe that I was discriminated against because of my (check all that apply):

☒ race

☐ religion

☐ national origin

☐ color

☐ gender

☒ disability

☒ age (birth year is: _____)

☐ other:

Did you state the same reason(s) in your charge of discrimination?

☒ Yes

☐ No

12. State here, as briefly and clearly as possible, the essential facts of your claim. Describe specifically the conduct that you believe is discriminatory and describe how each defendant is involved in the conduct. Take time to organize your statement; you may use numbered paragraphs if you find it helpful. It is not necessary to make legal arguments, or to cite cases or statutes.

(Continue to page 6, if additional space is needed.)

13. The acts set forth in paragraph 12 of this complaint:

☐ are still being committed by the defendant.

☐ are no longer being committed by the defendant.

☒ may still be being committed by the defendant.

REQUEST FOR RELIEF

State briefly and exactly what you want the Court to do for you. Make no legal arguments;

cite no cases or statutes. make me whole again: give plaintiff
job as a greeter of placing products on the shelves
\$1,000,000 punitive damages
1,000,000 punitive damages
\$32,160 front pay

14. Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule

Do you claim the wrongs alleged in your complaint are continuing to occur now?

Yes ☒ No ☐

Do you claim actual damages for the acts alleged in your complaint?

Yes ☒ No ☐

Do you claim punitive monetary damages?

Yes ☒ No ☐

If you indicated that you claim actual damages or punitive monetary damages, state the amounts claimed and the reasons you claim you are entitled to recover these damages.

\$ 32,160 front pay damages he would have made the first year
\$ 1,000,000 punitive damages
\$ 1,000,000 compensatory
make me whole damages
1,000,000 mental anguish, pain and suffering

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 8 day of January, 2019.

Signature of Plaintiff(s) Charles J. Carter

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 8 day of January, 2019.

Signature of Plaintiff Charles P. Pomeroy